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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.D., A Person Coming
Under the Juvenile Court Law.

2d Juv. No. B300362
(Super. Ct. No. VJ46785)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

C.D.,

Defendant and Appellant.

C.D. appeals the juvenile court's order sustaining a wardship petition after finding true allegations that appellant committed an assault with a deadly weapon (Pen. Code,¹ § 245,

¹ All statutory references are to the Penal Code unless otherwise stated.

subd. (a)(1)) and an attempted robbery (§§ 211, 664). (Welf. & Inst. Code, § 602.) The court also found that appellant personally used a deadly weapon (a knife) in committing the robbery (§ 12022, subd. (b)(1)). The court declared appellant a ward and ordered him placed in a suitable placement with a maximum period of confinement of five years and eight months. Appellant contends, and the People concede, that the court erred in failing to stay the sentence on the assault count pursuant to section 654. We shall order that the disposition order be amended to reflect a maximum period of confinement of four years. Otherwise, we affirm.

STATEMENT OF FACTS

On the evening of May 7, 2019, appellant approached 14-year-old I.M. in South Gate Park and asked him if he “bang[ed].” I.M., who is autistic, subsequently walked to a nearby skate park, where appellant confronted him again and asked, “do you bang?” After I.M. replied “no,” appellant punched him in the face. I.M. ran away and found a skate park staff member, who returned to the skate park with him so he could find his brother. After I.M. reunited with his brother, appellant approached him and hit him again. Appellant lifted his shirt to reveal a knife in his waistband, withdrew the knife, and pointed it at I.M.’s face. Appellant said, “Give me all [your] stuff or [I’ll] stab [you].”

I.M. reported the incident to the skate park staff member, who called 911. The police responded to the scene and arrested appellant. No knife was found in his possession or nearby.

DISCUSSION

Appellant contends that his maximum term of confinement must be reduced to four years because the juvenile court erred in failing to stay the sentence on the assault with a deadly weapon

count pursuant to section 654. The People correctly concede the issue.

When a juvenile court orders a minor removed from the physical custody of his or her parent or guardian, the court is required to specify the maximum period the minor can be held in physical confinement. (Welf. & Inst. Code, § 726, subd. (d)(1); *In re Danny H.* (2002) 104 Cal.App.4th 92, 106.) The maximum period of confinement consists of the upper term for the particular offense, plus any enhancements proven to be true. (Welf. & Inst. Code, § 726, subd. (d)(2); *In re Eddie L.* (2009) 175 Cal.App.4th 809, 814-815.)

A sentencing court acts in “‘excess of its jurisdiction’ and imposes an ‘unauthorized’ sentence when it erroneously stays or fails to stay execution of a sentence under section 654. [Citations.]” (*People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17; see also *In re R.L.* (2009) 170 Cal.App.4th 1339, 1345 [recognizing that section 654 applies to juvenile matters].) An appellate court may correct a legal error resulting in an unauthorized sentence at any time, which includes an alleged misapplication of section 654. (*People v. Sanders* (2012) 55 Cal.4th 731, 743, fn. 13.)

Although a person may be found to have committed more than one crime arising out of the same course of conduct, section 654 bars multiple punishment for the same criminal act. (*People v. Correa* (2012) 54 Cal.4th 331, 337.) When imposing sentence, the longest potential term of imprisonment shall be imposed, but the act or omission may not be punished under more than one provision. (§ 654, subd. (a).) The purpose of section 654 is to assure that punishment is equal to criminal culpability. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1211.) “Whether a course of criminal conduct is divisible and therefore gives rise to more than

one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ [Citation.]” (*Id.* at p. 1208, italics omitted.) It is the defendant’s intent and objective, and not the temporal proximity of his or her offenses, which determines whether the transaction is indivisible. (*People v. Hicks* (1993) 6 Cal.4th 784, 789.)

As the People concede, the evidence compels a finding that appellant committed the assault with a deadly weapon as a means of perpetrating the attempted robbery. Accordingly, the sentence on the assault count should have been stayed under section 654. (*In re Jesse F.* (1982) 137 Cal.App.3d 164, 171.)

When aggregating multiple counts in a sustained wardship petition, the juvenile court calculates the maximum period of confinement using the formula set forth in section 1170.1, subdivision (a). (Well. & Inst. Code, § 726, subd. (d)(3).) The “Principle Term” consists of the maximum term for attempted robbery (3 years) plus one year for the knife enhancement for an aggregate term of four years. The trial court erroneously added a subordinate term of one year (one-third the midterm) for the assault which the people concede shall be stayed and we so order. (§ 654.) We shall direct the juvenile court to amend its disposition order accordingly.

DISPOSITION

The juvenile court’s July 25, 2019 disposition order is amended to reflect that appellant has a maximum term of confinement of four years. The juvenile court shall have its corrected disposition order forwarded to any necessary

authorities. In all other respects, the juvenile court's disposition order is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Kevin Brown, Judge
Superior Court County of Los Angeles

Mary Bernstein, under appointment by the Court of
Appeal, for Defendant and Appellant.

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